United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13340

PAUL DAYTON, APPELLANT,

v.

WHITNEY GILLILLAND, PEARL CARTER PACE and HENRY J. CLAY, Constituting the Foreign Claims Settlement Commission of the United States, and GEORGE M. HUMPHREY as Secretary of the Treasury of the United States of America, APPELLEES.

Appeal from the United States District Court
for the District of Columbia

Decided February 14, 1957

Mr. Paul Ackerman, with whom *Mr. George Jovanovich* was on the brief, for appellant.

Mr. B. Jenkins Middleton, Attorney, Department of Justice, with whom Assistant Attorney General *George Cochran Doub* and *Messrs. Oliver Gasch*, United States Attorney, and *Samuel Slade*, Attorney, Department of Justice, were on the brief, for appellees. *Messrs. Lewis Carroll*, Assistant United States Attorney, and *Robert L. Toomey*, Assistant United States Attorney at the time record was filed, also entered appearances for appellees.

Before EDGERTON, Chief Judge, and WILBUR K. MILLER and WASHINGTON, Circuit Judges.

PER CURIAM: In this suit in the District Court, the essential allegations of the complaint were similar to those in *de Vegvar* v. *Gillilland*, 97 U.S. App. D.C. 126, 228 F.2d 640 (1955), cert. denied, 350 U.S. 904 (1956), and the case was held in abeyance pending termination of the *de Vegvar* litigation. After the decision in that case the defendants-appellees moved to dismiss the present suit on the ground that the court lacked jurisdiction over the subject matter. The District Court granted the motion on the authority of *de Vegvar*. This action on its part was clearly correct.

The District Court also denied plaintiff-appellant's motion to amend his complaint. We think it acted properly in so doing, because the proposed amendment would not supply the deficiencies of the original complaint or give the court jurisdiction. *Cf. Ledbetter* v. *Farmers Bank & Trust Co.*, 142 F.2d 147 (4th Cir.), cert. denied, 323 U.S. 719 (1944). The amendment would, among other things, allege that the plaintiff "has a property right in the Yugoslav Claims Fund," and that the action of the Commission deprived him of this property right "without due process of law in violation of the Fifth Amendment to the United States Constitution." These conclusory statements do not suffice to change the result called for by *de Vegvar*. Persons situated as is the plaintiff here "must claim solely by virtue of their interest in the fund created by the statute and under its terms they are not entitled to complain . . . ! " *Z. & F. Assets Corp.* v. *Hull*, 311 U.S. 470, 489 (1941). Certainly, too, there has been no taking of plaintiff's property by the United States. *de Vegvar*, *supra* at 128, 228 F.2d 642.

The judgment of the District Court will accordingly be

Affirmed.